IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 31ST JANUARY 2007 / 11TH MAGHA 1928

Crl.MC.No. 4993 of 2003()

ST.84/2000 of ADDL.CHIEF JUDICIAL MAGISTRATE (E & O), ERNAKULAM

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PETITIONER: ACCUSED:

SHRI CHANDY MATHEW,
74, BENSON CROSS ROAD, BENSON TOWN,
BANGALORE.

BY ADV. SRI.JOSEPH MARKOSE
SRI.MATHEWS K.UTHUPPACHAN

RESPONDENTS: COMPLAINANT AND THE UNION GOVERNMENT:

1. ASSISTANT REGISTRAR OF COMPANIES, KERALA
M.G. ROAD, COCHIN-682 011.

2. UNION OF INDIA,
REPRESENTED BY THE SECRETARY, MINISTRY OF FINANCE & COMPANY AFFAIRS, NEW DELHI.

ADDL. R3 IMPLEADED

3. STATE OF KERALA REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM
(ADDL. R3 IMPLEADED AS PER ORDER DT. 23.10.2003 CRL. M.C. NO. 4993/2003)

BY ADV. SRI.DINESH R.SHENOY, ADDL.CGSC for R1
SRI. AJITH KRISHNAN, ADDL.CGSC for R2

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 31/01/2007, ALONG WITH CRL.MC NOS. 3906 OF 2005 & 5001 OF 2003 THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R. UDAYABHANU, J

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CRL. M.C. NOS. 3906/2005, 4993 & 5001 OF 2003

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Dated this the 31st day of January 2007

O R D E R

The petitioner in Crl. M.C. No. 4993/2003 and the petitioner in the Crl. M.C. No. 5001 of 2003 is the Managing Director of Duroflex Coir Industries Ltd, a company incorporated under the Companies Act, 1956, against whom criminal proceedings have been initiated vide S.T. No. 84/2000 in the court of Additional Chief Judicial Magistrate (Economic Offences) Court, Ernakulam for the offence under section 211 of the Companies Act 1956 (Crl. M.C. 4993/2003) and for the offence under section 209 of the companies Act vide ST. No. 85/2000 and against the above petitioner and another Director have filed M.C. No. 3906/2005 with respect to the proceedings initiated against them for the offence under section 628 and 209 (1) of the Companies Act vide S.T.79/2000. The petitioner has sought for setting aside the proceedings initiated, as according to them, the violation alleged are covered by the immunity clause contained in the Voluntary

Disclosure of Income Scheme, 1997(herein after mentioned as VDIS). It is pointed out that section 64 of the VDIS provides for remittal of income tax on the income declared by any person in the accordance with the provisions of section 65. Section 68 mandates that apart from payment of the tax, the amount of the voluntarily disclosed income has to be credited by the declarant in his books of account and such credit is to be intimated to the Assessing Officer. Further section 68 provides that the amount of the voluntarily disclosed income shall not be included in the total income of the declarant for any assessment year under the Income-tax Act. Section 71 of the VDIS provides immunity against prosecution under the Income-tax Act, Wealth-tax Act, Foreign Exchange Regulation Act, 1973 and Companies Act, 1956 in respect of declarations made under section 64 of the VDIS. It is the case of the petitioners that it was in pursuance of the VDIS that the disclosed income for the previous years were incorporated in the concerned books of account and accordingly remitted the tax due and hence thereafter initiation of criminal proceedings are in violation of section 71._

2. The Assistant Registrar of Companies has filed a counter statement in Crl. M.C. No. 4993/2003 as well as in Crl. M.C. No. 3906/2005. It is contented that section 71 of the VDIS only provides that nothing contained in any declaration made under section 64 shall be admissible against the declarant for the purpose of any proceedings relating to imposition of penalty or for the prosecution under the Income-tax Act etc. According to the respondent, the section only says that the declaration made shall not be used as evidence against the declarant. According to the respondent, it was on independent inspection of books of accounts as provided under section 209 A of the Companies Act that the Inspecting Officer on his inspection on 1999 unearthed the non disclosure of income etc and deposits amounting to Rs. 89,77,467/- and that the same is not reflected in the balance sheet of the company of 31.12.1997 and hence section 211 is violated. Similar is the contention with respect to the infraction of section 209 of the Companies Act, as per the counter statement filed in Crl. M.C. 5001 OF 2003.

3. I find that the contention of the respondent/Assistant Registrar of Companies cannot be sustained. The very purpose of the immunity clause contained in section 71 is to avoid prosecution for violation of the provision on voluntarily disclosing the income and remitting the tax. After declaring the income as per the scheme pursuant to the provisions of the VDIS and incorporating the details in the records initiating the prosecution is against the very purport of the scheme. I find that the prosecution launched against the petitioners vide ST. Nos. 84/2000,85/2000 and 79/2000 in the court of Additional Chief Judicial Magistrate (Economic Offences) Ernakulam cannot be sustained and the same are herewith quashed.

The Crl. M.Cs are allowed accordingly.

K.R. UDAYABHANU, JUDGE.

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